

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

DALE IVAN BRADFORD,

Defendant-Appellant.

UNPUBLISHED

June 10, 2003

No. 237494

Calhoun Circuit Court

LC No. 00-004297

Before: Bandstra, P.J., and Gage and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right from his jury convictions of first-degree home invasion, MCL 750.110a(2), assault with intent to murder, MCL 750.83, and armed robbery, MCL 750.529. Defendant was sentenced to 12 to 20 years' imprisonment for first-degree home invasion, 37½ to 60 years' imprisonment for assault with intent to murder, and 18 to 40 years' imprisonment for armed robbery. The armed robbery and assault with intent to murder convictions were to be served concurrently, but consecutive to the sentence for first-degree home invasion. MCL 750.110a(8). We affirm defendant's convictions, but vacate defendant's sentences on the first-degree home invasion and assault with intent to murder convictions, and remand for resentencing.

Defendant entered an unlocked house while the owner was away for the purpose of robbing it. The victim, whose mother resided at the house, entered the house while the burglary was in progress. After hearing the victim enter, defendant picked up a full bottle of wine and hid in a bathroom. As the victim walked past, defendant struck him in the head with the bottle. After the victim fell, defendant demanded money, refusing to let the victim get up. Defendant then fled from the house, carrying jewelry, coins, and the victim's wallet. The victim's mother returned home to find the victim covered in blood and moaning.

After learning that defendant may have been involved in the assault and that he had an unrelated outstanding warrant for his arrest, police went to defendant's sister-in-law's house, which is less than one-half mile from the victim's house. When they arrived, an officer witnessed defendant run from one side of the home's interior to the other. The officers arrested defendant in the kitchen, seated in a kitchen chair. A search of the house and defendant turned

up the victim's empty wallet, as well as boots belonging to defendant that contained traces of the victim's blood.

Defendant contends that the evidence produced at trial was insufficient to support a conviction of assault with intent to murder. We review a claim of insufficient evidence de novo, *People v Libbett*, 251 Mich App 353, 357; 650 NW2d 407 (2002), to determine if the evidence, viewed in a light most favorable to the prosecution, was sufficient to permit a rational trier of fact to find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992).

In *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999), this Court summarized:

The elements of assault with intent to murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). The intent to kill may be proved by inference from any facts in evidence. *Id.* Because of difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient to establish intent. *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Defendant admits that he assaulted the victim, but denies that he intended to kill him. Defendant clearly had motive—his desire to avoid identification and possible apprehension. By defendant's own admission, the first blow knocked the victim down. Nevertheless, defendant aimed and struck at least two more blows to the victim's head. The neurosurgeon who treated the victim testified that the victim sustained multiple fractures of the bones around his eyes and two epidural hematomas on different sides of the head—suggesting that the victim had been struck at least three times. The neurosurgeon also testified that the victim probably would have died from his injuries without treatment. The circumstances of the assault, the number of blows, and the severity of injuries all support an inference of defendant's intent to kill. Considered in a light most favorable to the prosecution, sufficient evidence existed to find beyond a reasonable doubt that defendant assaulted the victim with the intent to kill him, and that the killing would have qualified as murder if successful.

Defendant next contends that the trial court abused its discretion by awarding ten points for offense variable (OV) 19. We review the entire record to determine if the evidence supports the trial court's scoring of the offense variable. *People v Leversee*, 243 Mich App 337, 349; 622 NW2d 325 (2000), citing *People v Elliott*, 215 Mich App 259, 261-262; 544 NW2d 748 (1996) and *People v Johnson*, 202 Mich App 281, 288; 508 NW2d 509 (1993). Interpretation of the sentencing guidelines' language is a matter of law and is reviewed de novo. *People v Hegwood*, 465 Mich 432, 436; 636 NW2d 127 (2001).

A defendant receives ten points for OV 19 when the defendant “interfered with or attempted to interfere with the administration of justice.” MCL 777.49(c). For the purposes of OV 19, “[i]nterference with’ justice is equivalent in meaning to ‘obstruction of’ justice.” *People v Deline*, 254 Mich App 595, 597; 658 NW2d 164 (2002). To justify application of OV 19, the defendant’s conduct must “involve[] an effort to undermine or prohibit the judicial process by which a . . . criminal charge is resolved.” *Id.*

Here, defendant’s alleged attempt to “undermine or prohibit the judicial process” consisted of moving quickly through the interior of a house while the police approached from the outside. When the police actually entered the dwelling, they found defendant seated in the kitchen, which had no outside exit. Defendant made no effort to resist the arrest. At best, defendant initially considered fleeing, but quickly abandoned the idea. If mere consideration of evading arrest satisfies OV 19, the sentence increase would virtually apply to every defendant. Because defendant’s conduct did not involve “an effort to undermine the judicial process,” we conclude that the sentencing judge erroneously scored OV 19.

Defendant was initially scored at OV level V for the home-invasion charge.¹ For defendants scored at this level, MCL 777.63 indicates a recommended minimum sentence range of 99 to 160 months. The court imposed a minimum sentence of 144 months. After subtracting the ten points erroneously scored for OV 19, defendant’s OV level is decreased from level V to level IV. The recommended minimum sentence range for a defendant at level IV is 87 to 145 months, MCL 777.63; thus, defendant’s minimum sentence of 144 months still falls within the corrected guidelines’ range.

However, although defendant’s minimum sentence falls within the recalculated range of the statutory guidelines, we find that defendant should be resentenced for the first-degree home invasion conviction. This Court must affirm an imposed sentence that is within the appropriate guidelines’ range “absent an error in scoring the sentence guidelines or inaccurate information relied upon in determining the defendant’s sentence.” MCL 769.34(10). An error in scoring the sentencing guidelines that does not affect the total OV score enough to change the applicable sentencing guidelines’ range is harmless error. *People v Johnson*, 202 Mich App 281, 290; 508 NW2d 509 (1994). Here, the error did change the applicable guidelines’ range—defendant’s OV level dropped from V to IV, bringing a reduction in the corresponding sentence range.

“A defendant is entitled to have the sentencing guidelines’ range correctly calculated so that a court may determine an appropriate sentence in light of that range.” *People v Hannan*, 200 Mich App 123, 127; 504 NW2d 189 (1993). Instead of falling near the middle of the guidelines’ range as it originally did, the imposed sentence now falls at the very top of the recalculated range. Accordingly, we vacate the sentence for the conviction of first-degree home invasion and remand for resentencing. On resentencing, the court may choose to impose the same sentence or another sentence within the recalculated range, or articulate substantial and compelling reasons

¹ The SIR mistakenly indicates an OV level III for this charge. Based on the 51 OV points scored, the OV should properly be classified as OV level V. This mistake appears to be a harmless oversight in the SIR, however, since the judge actually imposed the correct sentencing range for a level V.

for deviating from that range in the event of a departure.

A ten-point reduction in the OV score for the assault with intent to murder conviction reduces the OV level from level VI to level V. This correction reduces the recommended sentence range from 270 to 450 months to a range of 225 to 375 months. MCL 777.63. The court imposed a 450-month minimum sentence for the assault conviction. Unlike the home invasion sentence, defendant's minimum sentence for the assault conviction exceeds the appropriate guidelines' range. Because the sentencing court believed that the imposed sentence fell within the guidelines' range, the court did not provide substantial and compelling reasons to exceed the guidelines' recommended sentence range as required by MCL 769.34(3). Accordingly, we vacate defendant's sentence on the assault with intent to murder conviction and remand for resentencing. On resentencing, the court shall either recalculate the guidelines and sentence defendant within the appropriate range, or articulate substantial and compelling reasons for deviating from that range in the event of a departure.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Hilda R. Gage

/s/ Bill Schuette